UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/NGO/61
17 March 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 16

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SEVENTH SESSION

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 March 1997]

Trafficking in women

1. Trafficking in women for the purposes of prostitution, marriage, domestic work and other forms of labour is a serious and worsening problem on every continent of the globe. The practice of trafficking, whereby women are coerced, abducted or lured into migrating to work in prostitution or other sectors, violates the human rights of the women concerned. It is, moreover, associated with a whole range of human rights abuses to which all migrant workers are particularly vulnerable, including debt bondage, forced labour, wage withholding, sexual and other physical abuse, illegal confinement, and deprivation of identity documents. Women may experience abuse on two related but separate levels: during the process of recruitment and travel, and in the terms and conditions of their working and living arrangements in the country of destination.

2. Trafficking victims are commonly denied access to legal remedies and redress for these severe human rights violations. Most trafficked persons are socially, linguistically, culturally, morally and legally isolated. Frequently, they are under the physical control of their employers, lacking any identity papers, and uncertain of their status and rights in the receiving country. Most are illegal migrants, subject to the constant threat of detention and deportation. Women trafficked into prostitution fear, in addition, criminal sanctions based on the illegal status of prostitution in many countries. All these factors contribute to an atmosphere that inhibits trafficked persons from speaking out to officials or seeking redress for abuses from State agencies.

3. The problem is compounded by the fact that, in practice, States generally treat trafficked persons simply as illegal migrants, detaining and summarily deporting them upon detection. Officials hardly ever investigate or record the testimony of victims in State custody as to the abuses they have suffered, or allow them an opportunity to file charges or bring civil suits against their employers and traffickers. Rarely are systematic efforts made to track down and prosecute the employers or traffickers. In many countries law enforcement officials and immigration agents are directly involved in traffic in women and girls and profit from this trade. For a price, officials aid and abet the passage of women, ignore abuses in their jurisdictions, and protect recruiters, traffickers, brothel owners and clients from arrest. Sometimes, police officers are the brothel owners' best clients. Efforts to control prostitution usually result in the discriminatory arrest and prosecution of the women and girls involved rather than of the clients and the predominantly male traffickers and brothel owners, in violation of the principle of equal protection under the law.

4. Trafficking in women is a fast-growing problem in the United States. The country has drastically inadequate laws to punish perpetrators and to provide the requisite rights protections and services for victims. Women from Asia, Central and South America, Eastern Europe and the Russian Federation are being trafficked into the United States in increasing numbers for work in clandestine brothels, domestic service, and garment "sweatshops". Urban centres such as New York, Los Angeles, and Dallas reportedly have numerous underground brothels and garment factories employing trafficked women. Sophisticated criminal networks are reputedly involved in trading women across United States borders, although employers also recruit women directly. The women are subjected to a range of abuses, including fraud, debt bondage, enforced isolation or confinement, and physical violence.

5. Upon detecting trafficked women in brothels and sweatshops across the United States, the police consistently detain them. The women are usually summarily deported, unless their testimony is required for criminal cases against their traffickers or employers. Where criminal suits are instituted against the latter, in many cases the charges do not reflect the civil and human rights violations committed against the women. Rather, the traffickers and brothel owners are typically prosecuted only for crimes such as hiring illegal aliens and conspiring to commit prostitution. This pattern is due, in part, to inadequate domestic criminal laws that fail fully to protect the rights of trafficked persons and others held in debt bondage and involuntary servitude.

6. The applicable United States constitutional and statutory proscriptions on "involuntary servitude" have been interpreted narrowly by the Supreme Court to prohibit only those slavery-like situations in which victims are forced to work through force of law or actual or threatened physical force. United States law does not punish slavery-like practices in which persons are forced into labour through the use of blackmail, fraud, deceit and psychological pressure, among other factors. As such, domestic law fails, in violation of the international obligations of the United States, to criminalize the form of debt bondage experienced by many trafficked women, which is enforced through fraudulent manipulation of the debts owed by the women to their traffickers and brothel owners. The women are indebted for travel fees, room and board, clothing and medicine; their wages are withheld by their brothel owners towards repayment of their debts. The brothel owners perpetuate the debts indefinitely through fraud, including by grossly underpaying the women, charging exorbitant interest rates, or by inflating prices for food and basic necessities, to keep the women working for them for little or no wages. Although excluded from the purview of United States law, this form of debt bondage is explicitly prohibited by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, to which the United States is a party, and is covered also by the prohibition, in article 8 of the International Covenant on Civil and Political Rights, of "slavery and the slave-trade in all their forms".

7. Human Rights Watch has also investigated trafficking in women and girls from Myanmar to Thailand, from Nepal to India, and from Bangladesh to Pakistan. Debt bondage, among other serious abuses, is rampant in all these contexts. Most of the women and girls do not know the size of the debt assessed against them for travel and living expenses, are unable to monitor its repayment, and cannot precisely define when and how it will be repaid. In many cases, the women and girls are totally under their brothel owners' control, confined to the brothel premises for prolonged periods of time, and their personal liberties are completely curtailed.

8. The relevant Governments' primary response has been to detain and deport the women and girls as illegal migrants rather than to prosecute their abusers. The women and girls are routinely subjected to ill-treatment and denied due process rights during detention. In most cases, official corruption serves to ensure virtual impunity for the parties responsible for violating the human rights of trafficked women and girls.

9. Human Rights Watch urges the Commission on Human Rights:

(a) To call on Member States to reform their law and practice regarding trafficking to make them consistent with international human rights standards, including the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which bans debt bondage and forced marriage; International Labour Organization Convention No. 29 concerning Forced Labour; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) To initiate a comprehensive examination of current manifestations, mechanics and trends of trafficking on the global level, and a corresponding assessment of existing international standards pertaining to trafficking, with a view to consolidating and updating them as well as clarifying any conceptual confusions;

(c) To conduct a systematic review of existing United Nations protections for migrants, refugees, prisoners and other groups, with a view to compiling a set of rules based on similar principles for the uniform treatment of trafficked persons to ensure protection of their rights and a remedy for the abuses they suffer;

(d) To call on Member States to actively investigate and prosecute all those engaged in trafficking in women and girls as well as associated abuses, including debt bondage, illegal confinement, rape and other sexual and physical abuse;

(e) To call on Member States to specifically train law enforcement personnel to identify trafficked persons and to protect their human rights;

(f) To ensure that both the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, its causes and consequences, have adequate funds and institutional support to fulfil their mandates, including monitoring traffic in women and girls.